

MURRAY  
v.  
SCHOONER  
CHARMING  
BETSY.

the insurance actually paid, and such expenses as were necessarily sustained in consequence of bringing the vessel into the *United States*, as the standard by which the damages ought to be measured. Each party to pay his own costs in this court and in the circuit court.— All which is ordered and decreed accordingly.

A true copy.

E. B. CALDWELL, *Clerk*

*Sup. Court U. States.*

Captain *Murray* was reimbursed his damages, interest and charges, out of the Treasury of the *United States*, by an act of Congress, *January 31st, 1805.*

CAPRON  
v.  
VAN NOOR-  
DEN.

### CAPRON v. VAN NOORDEN.

A plaintiff may assign for error the want of jurisdiction in that court to which he has chosen to resort.

A party may take advantage of an error in his favor, if it be an error of the Court.

The Courts of the U. S. have not jurisdiction unless the record shews that the parties are citizens of different states; or that one is an alien, &c.

ERROR to the Circuit Court of *North-Carolina*. The proceedings stated *Van Noorden* to be late of *Pitt county*, but did not allege *Capron*, the plaintiff, to be an alien, nor a citizen of any state; nor the place of his residence.

Upon the general issue, in an action of trespass on the case, a verdict was found for the defendant, *Van Noorden*, upon which judgment was rendered.

The writ of Error was sued out by *Capron*, the plaintiff below, who assigned for error, among other things, first "That the circuit court aforesaid is a court of limited jurisdiction, and that by the record aforesaid it doth not appear, as it ought to have done, that either the said *George Capron*, or the said *Hadrianus Van Noorden* was an alien at the time of the commencement of said suit, or at any other time, or that one of the said parties was at that or any other time, a citizen of the state of *North-Carolina* where the suit was brought, and the other a citizen of another state; or that they the said *George* and *Hadrianus* were for any cause whatever, persons within the jurisdiction of the said court, and capable of suing and being sued there."

And secondly, "That by the record aforesaid it manifestly appeareth that the said Circuit Court had not any jurisdiction of the cause aforesaid, nor ought to have held plea thereof, or given judgment therein, but ought to have dismissed the same, whereas the said Court hath proceeded to final judgment therein."

CAPRON  
V.  
VAN NOOR-  
DEN.

*Harper, for the plaintiff in error*, stated the only question to be whether the plaintiff had a right to assign for error, the want of jurisdiction in that Court to which he had chosen to resort.

It is true, as a general rule, that a man cannot reverse a judgment for error in *process or delay*, unless he can shew that the error was to his disadvantage; but it is also a rule, that he may reverse a judgment for an error of the Court, even though it be for his advantage. As if a verdict be found for the debt, damages, and costs; and the judgment be only for the debt and damages, the defendant may assign for error that the judgment was not also for costs, although the error is for his advantage.

Here it was the duty of the Court to see that they had jurisdiction, for the consent of parties could not give it.

It is therefore an *error of the Court*, and the plaintiff has a right to take advantage of it. 2 *Bac. Ab. Tit. Error. (K. 4.)*—8 *Co. 59. (a) Beecher's case.*—1 *Roll. Ab. 759.*—*Moor 692.*—1 *Lev. 289. Bernard v. Bernard.*

The defendant in error did not appear, but the citation having been duly served, the judgment was reversed.

### HEAD & AMORY, v. THE PROVIDENCE INSURANCE COMPANY.

HEAD  
& AMORY

V.  
THE PROVIDENCE INSURANCE COMPANY.

THIS was an action on the case brought by the plaintiffs in error, upon two policies of insurance, in the Circuit Court of the first circuit, holden at *Providence* in the district of *Rhode-Island*,† in which action judgment was rendered at *April* term 1802, for the plaintiffs in error, upon one of the policies only, viz. that upon the vessel.

If the insured make a proposition to the underwriters to cancel the policy, which proposition is rejected—If the underwriters afterwards

† Under the act of Congress of *February 13, 1801*, by which sixteen Circuit Judges were appointed.